

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3162
Administrative Law Judge Division
November 18, 2005

R E S O L U T I O N

RESOLUTION ALJ 176-3162. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hl2

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on November 18, 2005, the following Commissioners voting favorably thereon:

/s/ STEVE LARSON

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3162 (11/18/05)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A05-10-032 CITY OF SAN CLEMENTE, for authority to construct a new Mariposa pedestrian underpass rail crossing, proposed CPUC Crossing No. 101OR-204.35-BD, within the City of San Clemente, County of Orange, California, under the single-track Orange Subdivision main line of the Southern California Regional Rail Authority (SCRRA).	Ratesetting	Ratesetting	NO
A05-10-035 CALIFORNIA WATER SERVICE COMPANY (U 60 W), a corporation, for authority to Implement a Low-Income Ratepayer Assistance Program in compliance with Decision 03-09-021 in Application 01-09-062.	Ratesetting	Adjudicatory	NO
A05-11-001 MUKESH BERRY, doing business as Berry Airport Shuttle and Limousine Service, for authority to operate as a Passenger Stage Operations between points in the Counties of Alameda, Santa Clara and San Mateo, and the International Airports located in San Francisco, San Jose and Oakland.	Ratesetting	Ratesetting	NO
A05-11-002 NORDAR SYSTEMS LLC, for authority to operate as a passenger stage corporation between points in San Francisco, Alameda, Contra Costa, Santa Clara and San Mateo Counties and the San Francisco, Oakland and San Jose International Airports and to establish a zone of rate freedom.	Ratesetting	Ratesetting	NO
A05-11-003 AMERIVON LLC for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A05-11-005 CITY OF SANTA FE SPRINGS, for authority to construct an underpass grade separation of Valley View Avenue (C.P.U.C. Crossing No.002-158.40) at the BNSF Railway San Bernardino Subdivision within the Cities of Santa Fe Springs and LaMirada, County of Los Angeles.	Ratesetting	Ratesetting	NO
A05-11-006 GEMINI PARTNERS, INC., SCORPION CAPITAL PARTNERS, L.P., TELSCAPE COMMUNICATIONS, INC. (U 6589 C), for approval of a change of control.	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3162 (11/18/05)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A05-11-007 CONSUMER TELCOM, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A05-11-008 SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E), SOUTHERN CALIFORNIA EDISON COMPANY (U 338 E), for the 2005 Nuclear Decommissioning Cost Triennial Proceeding to set contribution levels for the companies' Nuclear Decommissioning Trust Funds and address other related Decommissioning issues.	Ratesetting	Ratesetting	YES
A05-11-009 PACIFIC GAS AND ELECTRIC COMPANY, in its 2005 Nuclear Decommissioning Cost Triennial Proceeding.	Ratesetting	Ratesetting	YES
A05-11-010 CABUTE, BERNARD AND SATERFIELD, DARRYCK, dba MOUNTAIN VIEW LIMO. & AIRPORT SHUTTLE, for authority to operate as an on-call Passenger Stage Corporation between points in the Counties of San Mateo and Santa Clara, and the International Airports Located in San Francisco, Oakland, and San Jose; and to establish a Zone of Rate Freedom.	Ratesetting	Ratesetting	NO